

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

April 16, 2009

A meeting of the Board of Environmental Protection was held on Thursday, April 16, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 8:30 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler.

Absent: Matt Scott

Vacancy: There is one vacancy on the Board.

<u>Staff:</u>	Lynne Cayting	Bureau of Air Quality
	Mike Mullen	Bureau of Land and Water Quality
	Dana Murch	Bureau of Land and Water Quality
	Beth Callahan	Bureau of Land and Water Quality
	James Cassida	Bureau of Land and Water Quality

Others: David Littell, Commissioner
Andy Fisk, Director Bureau of Land and Water Quality
Peggy Bensinger, Assistant Attorney General
Jan McClintock, Assistant Attorney General (Scribner's Mills appeal only)
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

Draft – Pending Board Approval

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Federal Greenhouse Gas: Commissioner Littell noted that recent news reports from Washington D.C. concerning regulation of greenhouse gas indicate that the US Environmental Protection Agency (EPA) is poised to regulate greenhouse gas. This clears the way for California and the other 13 states to regulate emissions from vehicles utilizing the adopted California standards. As a result of this Court Order, EPA will soon be evaluating the clean air interstate rules and mercury rules.

Economic Stimulus funding: Maine will receive funding totaling close to 30-million dollars for environmental protection initiatives.

Funding will support drinking water and wastewater projects in 16 communities through 23 projects across the state. Maine will be able to forgive loans and has adopted a sliding scale which guarantees a minimum of 10% and in some cases 100% loan forgiveness based on an ability to pay. The Department is hoping that Legislature will authorize bonds to bridge the gaps for projects not supported by stimulus funding.

Diesel – the Department will distribute 1.7-million dollars to support a fishing boat engine replacement program reducing particulate emissions up to 70%. This funding will also support installation of engine controls in school buses, trash trucks and Maine Dept. of Transportation non-road construction vehicles to prevent idling.

Under Ground Storage Tanks – the Department will receive 1.4 million dollars for clean up of the large tanks that meet the federal definition.

Brownfields funding – bill language did not allocate stimulus funds to support brownfields projects. The Department is working with planning commissions and municipalities to help them obtain local stimulus funding for these projects.

Legislation: There are three bills taking different approaches dealing with energy uses and climate change this session. The climate change and sprawl changes to site law bill sponsored by the Speaker and Senate President was recently heard. Department's site law bill addressing greenhouse gases will be heard this week. Lastly, a pharmaceutical product stewardship bill was heard on Tuesday.

Board member M. Wing Goodale asked about the status of the mercury bill.

Commissioner Littell explained that there are three mercury bills; one is intended to update product bans to include wheel weights and recoil mechanism in rifles, one bill deals with levels of mercury in compact fluorescents. This bill would limit the amount of mercury contained in the bulb and require product stewardship funded by makers of the blubs, and one includes the mercury contained in vehicles with the self-balancing wheel weight system.

Board member Elizabeth Ehrenfeld asked about the status of the water quality reclass recommendation.

Commissioner Littell noted that the matter was voted out of Committee and offered that Andy Fisk, Director of Land and Water Quality could brief the board following today's meeting agenda.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:

Board Meeting May 7th – Cynthia Bertocci noted that Pete Carney, DEP Director of Enforcement is to host a question and answer session as a follow-up to the March 19th enforcement briefing. The Department staff will conduct a site visit to a local vernal pool at the conclusion of the meeting agenda.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (8-0-0-1) on a motion to approve consent agenda items 1 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

1. BEP MINUTES – JANUARY 15, 2009 (approval)

The Board voted (7-0-1-1) on a motion to approve consent agenda items 2 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, and Nancy Ziegler voted to support the motion. Board member Lissa Widoff voted to abstain. Board member Matt Scott was absent. There is one vacancy.

2. BEP MINUTES – MARCH 19, 2009 (approval)

The Board voted (8-0-0-1) on a motion to approve consent agenda items 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15 as presented.

Note: Consent Agenda item #10 ROBERT GLADU and RALPH SAWYER d/b/a PEPPERELL ASSOCIATES was withdrawn from consideration.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

3. JAMES KING, Wilton - Administrative Consent Agreement (BLWQ - Water)
4. TRACY GORDON, Avon – Administrative Consent Agreement (BLWQ - Water)
5. BIRGIT FRANDBSEN, Kittery – Administrative Consent Agreement (BLWQ – Water)
6. FRASER PAPERS LIMITED, Madawaska - Administrative Consent Agreement (BLWQ – Water)
7. IRVING FOREST PRODUCTS, INC., Strong – Administrative Consent Agreement (BLWQ – Water)
8. DELORES CHAPMAN, Harrison – Administrative Consent Agreement (BLWQ – Land)
9. JOHN P. CARROLL FAMILY TRUST, Limerick – Administrative Consent Agreement (BLWQ – Land)
10. ~~ROBERT GLADU and RALPH SAWYER d/b/a PEPPERELL ASSOCIATES~~
~~Lewiston – Administrative Consent Agreement (BRWM)~~
11. F.R. CARROLL, INC., Limerick – Administrative Consent Agreement (BAQ)
12. BANGOR HISTORIC TRACK, INC., d/b/a HOLLYWOOD SLOTS, Bangor – Administrative Consent Agreement (BAQ)
13. HARRY C. CROOKER & SONS, INC., Whitefield – Administrative Consent Agreement (BAQ)
14. TROMBLEY INDUSTRIES, INC., Caribou – Administrative Consent Agreement (BAQ)
15. POND COVE MILL WORK, INC. South Portland – Administrative Consent Agreement (BRWM)

III. Regular Agenda

- 1 CHAPTER 127, NEW MOTOR VEHICLE EMISSION STANDARDS / AMENDMENTS (adoption*)

Staff: Lynne Cayting, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to adopt proposed amendments to Chapter 127, New Motor Vehicle Emission Standards which establishes emission standards for new passenger cars, light duty trucks, medium duty, and heavy-duty diesel vehicles. Amendments comply with recent changes to the California standards by providing that 2010 model year vehicles display an environmental performance label, and establish idling limits resulting in a requirement for the installation of an auxiliary power system for operation of thermal energy opposed to idling of the diesel engine. The vote was taken pursuant to 38 M.R.S. Section 341-D, 585-A, 585-D and Section 177 of the 1990 Clean Air Act Amendments.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

2. CHAPTER 305, PERMIT BY RULE / AMENDMENTS (post to public hearing)

Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to post amendments to Chapter 305, Permit By Rule amendments (routine technical). Amendments propose limiting access ways to footpath, stairway or steps; eliminating riprap on a coastal shoreline and elevation requirements for culverts, and modifying activities in existing developed areas in significant vernal pool habitat. A public hearing is anticipated on Thursday, May 21, 2009 and the deadline for written public comment is June 1, 2009. The vote was taken pursuant to 38 M.R.S. §§ 341-D, 480-A and 480-FF.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

The Board voted (8-0-0-1) on a motion to post amendments to Chapter 305, Permit By Rule Section 16 Activities in Coastal Sand Dunes (major substantive). Amendments incorporate definition changes consistent with Chapter 355, Coastal Sand Dune and allow new activities in a sand dune (winter cobble-trapping fences) and submission requirements for new activities. A public hearing is anticipated on Thursday, May 21, 2009 and the deadline for written public comment is June 1, 2009. The vote was taken pursuant to 38 M.R.S. §§ 341-D, 480-A and 480-FF.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

3. SCRIBNER's MILL PRESERVATION INC., / WATER QUALITY
CERTIFICATION PERMIT DENIAL DEP [L-21190-35-B-N] (appeal)

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to deny the appeal submitted by Scott Hatch on behalf of Scribner's Mill Preservation Inc. affirming the Commissioner's licensing decision [L-21190-35-B-N] denying an application for construction of a dam and fish way. The Board approved the draft proposed order as modified:

Board Order page 5 last paragraph:

...passage for adult landlocked salmon from 100% to ~~98%~~ **99.5%** and for juvenile landlocked salmon from 45% to ~~46%~~ **28.2%** at river flows.....

The vote was taken pursuant to 38 M.R.S. § 341-D(1-B) and 06-096 CMR Chapter 2.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

BOARD RECONVENED AT 1:00 P.M. FOR CONSIDERATION OF THE REMAINDER OF THE AGENDA.

4. DAVID E. RICE / COMMERCIAL PIER, RAMP & FLOAT / NRPA PERMIT DEP
LICENSE #L-23698-4E-A-A (appeal by Cornelia Johnson, John Rounds A.C.
Pavis-Rounds, Peter Rounds, Dirk & Linda Brunner)
Staff: Beth Callahan, Bureau of Land and Water Quality
Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (6-0-0-2) on a motion to deny the request for a public hearing and to deny the appeal submitted by Cornelia Johnson, John Rounds A.C. Pavis-Rounds, Peter Rounds, Dirk and Linda Brunner related to Department approval L-23698-4E-A-A for construction of a commercial pier, ramp, float and associated structures. The motion approved the draft proposed Board as modified:

Board Order page 7 – second paragraph last sentence

... Appellants state that the applicant has the following options, **plus the combination of options 1 and 2:**

Board Order page 8 – second paragraph (deleted last sentence)

The Harbormaster further commented that the currents at this site can reach up to 4 or 5 knots on typical strong days. ~~During very strong days, the current has been known to reach up to 7 knots for a short period of time.~~

Board Order page 9 – first paragraph

... due to strong currents and **the evidence raising significant questions about the applicant's riparian right to expand and** after weighing the amount of small impacts...

The vote was taken pursuant to 38 M.R.S. § 341, Section 480-A to 480-F, 06-096 CMR Chapter 2 and Chapter 310, Wetland and Waterbodies Protection.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, and Lissa Widoff voted to support the motion. Board member Matt Scott and Nancy Ziegler were absent. There is one vacancy.